

Respectfully submits the following position on:

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HB 5267 and SB 350

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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Real Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,184.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision making body is 14. The number who voted in favor of this position was 14.

Report on Public Policy Position

Name of section:

Real Property Law Section

Contact person:

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Bill Numbers:

HB 5267 (Miller and SB 350 (Cassis)

Date Position was adopted:

December 2, 2009

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

14

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

See the attached sheet.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report. <http://legislature.mi.gov/doc.aspx?2009-HB-5267> and <http://legislature.mi.gov/doc.aspx?2009-SB-350>

**MORTGAGE FINANCING COMMITTEE
RECOMMENDATION TO REAL PROPERTY COUNCIL RE HB 5267 AND SB 350**

The Mortgage Financing Committee recommends that the Real Property Council **OPPOSE** HB 5267 and SB 350.

HB 5267 and SB 350 amend MCL 600.3240 to, among other things:

(1) Prohibit a purchaser at a foreclosure sale from adding to the redemption amount advances to pay taxes, insurance, condominium assessments and senior liens, unless the purchaser files an affidavit for those amounts not less than 30 days prior to expiration of the redemption period. MCL 600.3240(4). Currently MCL 600.3240(4) allows a purchaser to file such an affidavit at any time prior to expiration of the redemption period.

(2) Permit a register of deeds for a county with a population of more than 500,000 and less than 1,500,000 (apparently only Oakland and Macomb Counties) to determine the redemption amount. The bills also provide that such a county is **"NOT LIABLE FOR DAMAGES PROXIMATELY CAUSED BY AN INCORRECT DETERMINATION OF AN AMOUNT NECESSARY FOR REDEMPTION UNDER SUBSECTION (2),"** and further provide that **"THE PURCHASER SHALL ACCEPT THE AMOUNT CALCULATED BY THE REGISTER OF DEEDS UNDER THIS SECTION."** MCL 600.3240(14).

The Committee recommends **OPPOSITION** for the following reasons:

(1) Amendments to MCL 600.3204(4) are inequitable, because in certain circumstances, a purchaser might be required to make insurance, tax or other applicable payments during the last 30 days before the redemption period expires, and in such cases the property can be redeemed without repayment of such amounts. Also, the 30-day requirement could dis-incent purchasers from making such payments because of the increased risk that the payment might not be added to the redemption amount.

(2) HB 5267 requires a purchaser to "accept" a redemption amount erroneously calculated by the register of deeds, and the register of deeds has no liability for such erroneous calculations. SB 350 does not expressly require a purchaser to "accept" a redemption amount erroneously calculated by the register of deeds, but because it authorizes the register of deeds to calculate the redemption amount it creates a statutory reliance argument by the redeeming party. Under either proposed legislation, this would likely result in litigation over title and the appropriateness of redemptions.